In the High Court of Uttaranchal, at Nainital.
Civil Revision No. 192/2001
(Old No. 454/1998)

Alladia Khan S/o Multan Khan
R/o Gola Bazar, Tamka Mohalla,
Srinagar, District Pauri Garhwal ..Revisionist.

Vs.

Zahid Hasan S/o Abdul Hamid,
Shop Keeper, Gola Bazar, Tamka Mohalla,
Srinagar, District Pauri Garhwal .. Opp.Party.

Sri U.P.S. Negi, learned counsel for the revisionist.
Sri Sharad Shrama, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J:

This revision, U/S 25 of Provencial Small Causes court Act, has been preferred against the judgment dated 30-6-1998, passed by Judge Small Causes Court/District Judge, Pauri Garhwal, in JSCC Suit No. 1 of 1994, Alladia Khan Vs. Zahid Hasan.

2- Brief facts of the case are that the plaintiff/revisionist has filed a S.C.C. Suit before the J.S.C.C. /District Judge Pauri Garhwal for recovery of arrears of rent and ejectment of the defendant/opposite party from the property in suit. According to him he owns a shop at Srinagar Garhwal, within the Municipal area. In the year 1988 he has let out one room of the shop at the ground floor to the defendant/opposite party on a monthly rent of Rs. 400/-. He also pleaded that the shop in question was constructed in the year 1988 and the same is within the Municipal area, therefore, the provisions of U.P. Urban Buildings(Letting, Rent and Eviction) Act 1972 do not apply on it. The plaintiff also pleaded that the defendant did not pay the rent for the months of June 1993 to September 1993, amounting to Rs. 1600/-.

The plaintiff, therefore, sent registered notice to the defendant demanding the arrear of rent and ejectment. The plaintiff also pleaded that the shop in question was needed for himself and his son to start their own business. The plaintiff through the notice also directed the defendant to pay the arrear of rent and hand over the possession of the property in dispute within 30 days. The notice was received by the defendant on 5-10-1993 but he neither paid the arrear of rent nor handed over the possession.

3- The defendant/opposite party filed written statement and denied the plaint allegations. The defendant did not dispute the tenancy of the shop in question. He alleged that the suit was instituted on wrong facts. He also alleged that neither the plaintiff has bonafide need nor he can be ejected on this ground from the tenanted property. The defendant also pleaded that many times he tried to give the rent to the plaintiff and also sent the same through money order but he deliberately did not accept the same, hence the suit is not maintainable.

4- On the basis of pleadings of parties the trial court framed the following issues for consideration:-

1- Whether, on the basis of the notice sent by the plaintiff, the tenancy cannot be terminated? If so, its effect?.
2- To what relief, the plaintiff is entitled to get?

5- The parties led evidence. Thereafter the trial court after hearing learned counsel for the parties and perusing the evidence on record dismissed the suit of the plaintiff with costs.

6- Feeling aggrieved, the plaintiff/appellant has preferred the appeal before the Allahabad High Court, which has been transferred to this Court after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- The record reveals that the plaintiff-revisionist sent the notice to the defendant-respondent prior to the institution of the suit and this notice was served on the defendant-respondent. The notice is available on the record as EXt-1 (paper No. 5-C/3). This notice has been proved by the plaintiff-revisionist. It appears that this notice was sent through registered post as the postal receipt along with the acknowledgement due is also available on the record. There is no dispute with regard to the receipt of this notice by the defendant-respondent.

9- The only dispute which has been raised is as to whether the notice which has been sent by the plaintiff-revisionist is legal or not.

10- The notice, Ext. 1, shows that it has been stated therein that the rent for four months was due. The record reveals that the defendant-respondent sent the rent by money orders which were refused to accept by the landlord/plaintiff. Therefore, the denial of the plaintiff/landlord in accepting the rent tendered by the tenant will not make a ground for ejectment on the basis of arrears of rent. The defendant-respondent filed the money order coupons, in which the endorsements have been made that they were refused. The plaintiff raised a plea before the court below that he never

refused to accept the money orders and the endorsements, if any, made on the money order coupons, would be false. The plea raised by the plaintiff-revisionist does not appear to be tenable, as it is plaintiff-revisionist who has specifically denied the receipt of the postal money orders, therefore, the burden shifts on the landlord to prove the service as the service is a question of fact to be determined by the court having regard to all the surrounding circumstances and the conduct of the parties. The presumption about the service of money orders on the basis of the endorsements of refusal by the postal authorities on the money order coupons is rebutable. There is no dispute about this aspect that the defendant-respondent had sent the money orders on the address of the landlord/plaintiff. The plaintiff/revisionist has no-where pleaded that money orders were sent on wrong address. It has also not been denied by the plaintiff-revisionist that on the dates on which the refusal is endorsed on the money-order coupons, he was not available. Therefore, in case if the money orders were sent on the correct address of the plaintiff/landlord, then there is a presumption that the same were duly tendered and mere vague denial by the landlord/plaintiff would not be sufficient to rebut the presumption in the facts and circumstances of the present case.

11- It is also made clear that earlier to this suit the plaintiff-revisionist had also filed a suit for rent and ejectment against the defendant-respondent on the same ground and the suit was dismissed in the year 1993. It appears that after the plaintiff-revisionist became unsuccessful in the earlier suit he filed this subsequent suit on similar allegations of arrears of rent

within a period of just one year of the dismissal of earlier suit. It also appears that the application filed by the plaintiff/revisionist under Order-15 Rule-5 C.P.C. was also not allowed and it is quite clear from the perusal of the record that when the notice was served upon the defendant/respondent, he was not in arrears of rent for more than four months.

12- In view of the assessment of the evidence on record, I come to the conclusion that the suit filed by the plaintiff-revisionist before the court below has been rightly dismissed.

13- I do not find any infirmity in the impugned judgment passed by the court below.

14- The revision lacks merit and is liable to be dismissed.

15- Accordingly the revision is dismissed. The interim order, if any, shall stand rejected.

(B.C. Kandpal, J.)

Dated: October 12, 2006.
ISB